

CC Docket No. 02-6

Request for Review of a Decision made by USAC

November 7, 2006

Letter of Appeal
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Appellant:

Larry Annett, Administrator
Cooperative Education Service Agency 10 (BEN 133365)
725 W. Park Ave.
Chippewa Falls, WI 54729
715-720-2079
email: annettld@cesa10.k12.wi.us

RE: Appeal for denial of 2005 funding for FRNs 1234553 (AT&T) and 1234596, (WiscNet). Appeal for denial of 2006 funding for FRNs 1403520 (AT&T) and 1403610 (WiscNet).

To Whom It May Concern:

The core issue: USAC has denied the four above funding requests claiming that there is a competitive bidding violation in which the associated Form 470 contains service provider contact information. The Cooperative Education Service Agency 10 (CESA 10) is appealing the four USAC denials. The 2005 denials were in a funding commitment decision letter dated March 8, 2006. We appealed the 2005 denials to USAC on May 1, 2006. This appeal was denied for the FRNs noted above by USAC in a letter dated October 2, 2006. Further, the 2006 denials were in a funding commitment decision letter dated October 3, 2006.

Our appeal to the Federal Communications Commission is divided into two parts; (1) Request to fund the AT&T requests, and (2) Request to fund the WiscNet requests.

(1) Request to fund the AT&T requests (FRN 1234553) and (FRN 1403520)

The reason USAC stated for denial of the AT&T requests (FRN 1234553) and (FRN 1403520) is that these requests referenced the same 2005 Form 470 (846830000504198) and the same 2006 Form 470 (802650000556127) as the

WiscNet requests. USAC is not claiming the AT&T funding requests had service provider information on the 470. It is only claiming that there was service provider participation in the WiscNet funding requests. However, USAC claims that under the FCC's Mastermind decision (May 23, 2000) the 470 is invalid for *any* funding requests on the same 470, even requests where there is no issue concerning service provider participation. We have reviewed closely the Mastermind decision and do not think the Commission intended to deny all funding requests under the circumstances in this particular situation. Paragraph 11 of the Mastermind decision states, "We believe that the participation of the [service provider] contact person in the bidding process may significantly affect the submission of bids by other prospective bidders." However, regardless of the Commission's ruling in the WiscNet appeal below, any claim of WiscNet participation in the competitive bidding process did not in any way compromise bidding for the requested telecommunications services because WiscNet is only an Internet Service Provider (ISP), not an eligible telecommunications provider (ETP). Therefore, WiscNet could not provide the services offered by AT&T and thus had no affect on the bidding for this telecommunication funding request. Considering this, we request that the Commission clarify its Mastermind decision as follows: When there are multiple funding requests on a Form 470, and it is clear that there is no service provider participation in at least some of those requests, that those request can move forward and be funded. We believe this clarification is straight-forward, and fair to both applicants and service providers. Therefore, we respectfully request the Commission to approve the AT&T funding requests.

The funding for the AT&T telecommunication requests total \$6,232.32. Wisconsin public schools have been under state legislative imposed funding restrictions since 1995. Any funding denied to our agency has a detrimental impact on the delivery of technology-related services to our member school districts, their students and teachers.

(2) Request to fund the WiscNet requests (FRN 1234596) and (FRN 1403610)

USAC's initial denial of this funding request (FRN 1234596) and (FRN 1403610) for Internet services was that the corresponding 2005 Form 470 (846830000504198) and 2006 470 (802650000556127) contained service provider information which constitutes a competitive bidding violation. Our appeal correctly noted that there was no service provider information on the 470s. In denying our appeal, USAC then noted that Ross Wilson serves on the WiscNet board. This is correct, but Mr. Wilson is not a WiscNet employee. He is the director of educational technology services for CESA 10 and under all circumstances he represents the Agency, not any provider, in the 470 bidding process.

Paragraph 10 of the Mastermind decision states that an applicant violates bidding requirements when it "surrenders control of the bidding process to a service provider that participates in that bidding process." There was no surrendering of the process to a provider. In fact, WiscNet was not even aware that CESA 10 filed a form 470 seeking Internet services. In another section of paragraph 10 the

Commission is concerned that “other bidders may not receive from the contact person information of the same type and quality that the contact person retains for its own use as a bidder.” Again, Mr. Wilson was not a bidder. If any other ISP contacted Mr. Wilson, that ISP would receive the same type and quality of information about CESA 10 as any other provider.

To have any impact on the bidding process a prospective bidder would have to know that Mr. Wilson served on the WiscNet board because all contact information on the 470 correctly cites CESA 10. In paragraph 11 of the Mastermind decision the Commission stated a concern that a prospective bidder may not participate in the bidding process if it believes that another bidder is serving as the contact person. But to make this assumption is to ignore the well known fact that the vast majority of E-rate applicants nationwide never receive any bids for the services posted on their Form 470s.

Now, if by chance, another Internet Service Provider realized that Mr. Wilson served on the WiscNet board, the ISP could still submit a bid. The Agency would be required to evaluate this bid using cost as the primary factor. If another ISP offered better services at a lower price than WiscNet, then the Agency would have to accept the other ISP's bid to retain the Agency's E-rate discounts.

Ignoring the remote possibility that another provider would know that Mr. Wilson served on the WiscNet board and that this would in some manner taint the district's decision making process, we find the Commission's Cochrane-Fountain City School District Order (May 17, 2000) as having a more chilling effect on other prospective bidders. Paragraph 7 of the Commission's Cochrane-Fountain City Order states

An applicant with an existing contract that was not previously posted is obligated only to post its requests, carefully consider all bona fide bids submitted, and wait the requisite 28-day time period prior to renewing an existing contract for the funding year for which it is requesting discounts.

Under this Order if another provider underbid a district's multiyear contract, the district would have to break the contract, with possibly heavy penalties. This realization will have more of a deterrence on prospective providers than CESA 10 – WiscNet case where the Agency had no multiyear contract to break.

From a broader perspective, WiscNet is a non-profit, membership-owned cooperative that provides Internet services to K-12 schools, public libraries and academic institutions in Wisconsin. Many other states and regions have similar organizations. As the Internet and all its varied applications continues to have an ever increasing impact on educating our children, we need to encourage more, not less, K-20 collaboration. Denial of this funding will have a chilling effect on the positive, collaborative relationship WiscNet-type organizations have fostered between the K-12 school community and higher education.

I hope after reviewing our appeal that the Commission will approve both the AT&T and WiscNet funding requests. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Larry Annett
Cooperative Education Service Agency 10